

# **SPECIAL PROVISIONS**

## **HONOLULU RAIL TRANSIT PROJECT**

### **SECTION 106 PROGRAMMATIC AGREEMENT PROJECT MANAGER (KAKO'O) PROFESSIONAL SERVICES CONTRACT**

## **SPECIAL PROVISIONS TABLE OF CONTENTS**

- I. PROJECT
- II. SERVICES
- III. RESERVED
- IV. DELIVERY
- V. MODIFICATIONS TO THE GENERAL TERMS AND CONDITIONS FOR  
PROFESSIONAL SERVICES FOR THE CITY AND COUNTY OF HONOLULU  
(08/2000)
- VI. FEDERAL CLAUSES
- VII. ASSIGNMENT
- VIII. HEADINGS; GENDER; NUMBER
- IX. REFERENCES TO THE CITY AND COUNTY OF HONOLULU
- X. COMPLIANCE WITH OMB CIRCULAR A-87 - OFFICE OF MANAGEMENT AND  
BUDGET

### **EXHIBITS**

**EXHIBIT 1 - SCOPE OF SERVICES**

**EXHIBIT 2 - FEDERAL REQUIREMENTS**

- 1. ATTACHMENT 1.6 a) – DBE Participation Report
- 2. ATTACHMENT 1.6 b) – Final Report of DBE Participation and Instructions of  
completion of the Final Report of DBE Participation

**EXHIBIT 3 - GENERAL TERMS AND CONDITIONS FOR CONTRACTS FOR  
PROFESSIONAL SERVICES FOR THE CITY AND COUNTY OF HONOLULU  
(08/2000)**

**ATTACHMENT A – AGREED RATES OF PAY**

**ATTACHMENT B-1 – TASK ORDER PROCEDURES**

**ATTACHMENT B-2 – TASK ORDER FORM**

**SPECIAL PROVISIONS TO THE  
AGREEMENT FOR SECTION 106 PROGRAMMATIC AGREEMENT PROJECT  
MANAGER (KAKO'O) PROFESSIONAL SERVICES CONTRACT**

This Special Provisions to the Agreement for Section 106 Programmatic Agreement Project Manager (Kako'o) Professional Services Contract (this "Special Provisions") shall be incorporated into and be a part of that certain Agreement for Section 106 Programmatic Agreement Project Manager (Kako'o), by and between HART and CONTRACTOR, dated MAR 29 2012 (the "Agreement"). This Special Provisions and the General Terms and Conditions for Contracts for Professional Services for the City and County of Honolulu, dated 08/2000 ("General Terms and Conditions") shall apply to, and are incorporated by reference into the Agreement, except as modified by reference herein. All defined terms in the Agreement shall have the same meaning in this Special Provisions.

**I. PROJECT**

The Honolulu Rail Transit Project ("H RTP") is identified in the Final Environmental Impact Statement. It is described as a twenty (20) mile grade-separated fixed guideway transit system between East Kapolei and Ala Moana Center. HART will be contracting for services related to the Section 106 Programmatic Agreement Project Manager (Kako'o). These services will include but are not limited to: compliance with all Federal, State and City laws, regulations, and requirements; providing the capacity to accomplish the work, as defined in the Agreement and described in Exhibit 1 ("Work") in the required time while meeting the Secretary of Interior's Professional Qualification Standards set forth in 36 C.F.R. Part 61; meeting the Project's Section 106 Programmatic Agreement requirements; developing a best practices manual and lessons learned case study that will be valuable to this and other projects; and establishing lines of communication and working relationships with all consulting parties and stakeholders that become invaluable to the Project.

**II. SERVICES**

The basic services that the CONTRACTOR shall provide under the Agreement are set forth in the Scope of Services, attached hereto and incorporated herein as Exhibit 1.

**III. RESERVED**

**IV. DELIVERY**

The CONTRACTOR shall complete the Work required under this Agreement on an as needed task order basis as established and directed by HART.

V. MODIFICATIONS TO THE GENERAL TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES FOR THE CITY AND COUNTY OF HONOLULU (08/2000)

The General Terms and Conditions for Professional Services for the City and County of Honolulu (08/2000) shall apply to, and are incorporated by reference into this Agreement, except as modified herein.

**A. DEFINITIONS**

The following definitions are added to the General Terms and Conditions:

**“C.F.R.”** means the Code of Federal Regulations.

**“FEDERAL GOVERNMENT”** means the United States of America and any executive department or agency thereof.

**“FTA”** means the Federal Transit Administration, United States Department of Transportation. The Federal Transit Administration is the current designation for the former Urban Mass Transportation Administration. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administration or its acronym UMTA is deemed a reference to the Federal Transit Administration.

**“HART”** means the Honolulu Authority for Rapid Transportation. The acronym “HART” shall be substituted for the “City and County of Honolulu”, “CITY”, “Rapid Transit Division”, and “RTD” wherever those terms appears in the General Terms and Conditions, unless the context clearly indicates otherwise.

**“PMOC”** means the FTA’s Project Management Oversight Contractor.

**“PROJECT”** means Work performed as set forth in the Agreement, including furnishing all services, labor, materials, supplies, equipment and other incidentals reasonably necessary for the successful completion of the Work contemplated under the Agreement.

**“STANDARD OR REQUIREMENT”** means any provision of any Federal, State or local law, including City law, ordinance, code, rule, regulation, guideline, directive, order, circular, agreement, practice, policy, notice, plan, statement, or other standard or requirement, and any amendment or revision thereto made in the future, including any mandatory provision, term, condition, clause, representation, certification, assurance or other statement required thereunder.

**“U.S.C.”** means the United States Code.

**“U.S. DOT”** means the United States Department of Transportation, including its operating administrations.

The following definitions in the General Terms and Conditions are modified as follows:

**“CONTRACT”** shall be replaced with the term “Agreement”.

**“CONSULTANT” OR “CONTRACTOR”** means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other private legal entity engaged by HART to perform the Work under this Agreement.

**“OFFICER-IN-CHARGE”** means the HART Executive Director or designee.

**B. INSURANCE REQUIREMENTS**

Section 4.3 of the General Terms and Conditions shall be deleted in its entirety and replaced with the following:

**“4.3 INSURANCE REQUIREMENTS.** Insurance coverage shall be provided by insurers authorized to provide insurance in the State of Hawai‘i.

a. At all times during the term of this Agreement, and any extensions thereto, the CONTRACTOR shall, at his own expense, procure and maintain any and all insurance to cover CONTRACTOR’s operations that may be required under any applicable federal, state or local law, statute or ordinance or regulation, including but not limited to applicable workers compensation and automobile liability insurance. In addition, the CONTRACTOR shall maintain the following:

(1) **Commercial General Liability (CGL)** and if necessary commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence, and general aggregate, with HART and the City and County of Honolulu included as an additional insured under the CGL. The policies shall contain a waiver of subrogation in favor of HART and the City and County of Honolulu.

(2) **Professional Liability.** The CONTRACTOR shall maintain professional liability insurance with limits of not less than \$1,000,000 per occurrence/annual aggregate, covering the CONTRACTOR, the CONTRACTOR’s employees or agents for liability arising out of errors, omissions, or negligence in the performance of professional services under the contract.

b. The insurance specified above shall:

1. Provide that such insurance is primary coverage with respect to all insureds for claims arising from contractor's negligent acts and/or omissions or misconduct; and that any insurance (or self-insurance) carried by HART and the City and County of Honolulu shall be excess and non-contributing;
2. Contain a standard Cross Liability endorsement providing that the insurance applies separately to each insured, applicable to policies specified in 4.3. a;
3. Not be terminated, canceled, not renewed or substantially changed without THIRTY (30) DAYS prior written notice to HART, except for non-payment of premium;
4. Except for Professional Liability Insurance required in 4.3 a (2) above, insurance required in 4.3. a shall be written on an "Occurrence" form of policy, unless otherwise specifically approved by HART.

c. Certificate of insurance:

1. The CONTRACTOR will provide and thereafter maintain current and renewal certificates of insurance, prepared by a duly authorized agent, or if requested, copies of the policies, evidencing the insurance in effect at all times during the term of this contract as required herein to HART and the City and County of Honolulu.
2. Certificates shall clearly identify the project by name and/or contract number.
3. Certificates shall show the Certificate Holder as the Honolulu Authority for Rapid Transportation and the City and County of Honolulu, and be delivered to the Executive Director, 1099 Alakea Street, Suite 1700, Honolulu, Hawaii 96813, and the Director of Budget and Fiscal Services, 530 South King Street, Honolulu, Hawaii 96813."

**C. COMPENSATION AND INVOICING**

Section 8 of the General Terms and Conditions, entitled "PAYMENTS," is hereby deleted in its entirety and replaced with the following:

**"8. COMPENSATION AND INVOICING**

- a. Subject to the provisions set forth in this Agreement, the CONTRACTOR will be paid on a monthly basis by HART for authorized and satisfactorily completed Work and services rendered under this Agreement. Such payment shall be full compensation for Work performed and services rendered, for all supervision, labor, supplies, materials, equipment or use thereof, taxes, and for all other necessary incidentals. The amount to be paid to the CONTRACTOR shall be computed as hereafter set forth; provided that such payment shall not exceed the Total Price amount of ONE MILLION and NO/100 DOLLARS (\$1,000,000.00) or the appropriated amount, which includes all costs and fees associated with this Agreement. In the event the CONTRACTOR incurs costs, fees or other compensation in excess of the Total Price, adjusted as provided herein, the CONTRACTOR shall pay such excess from its own funds and HART shall not be required to pay any part of such excess and the CONTRACTOR shall have no claim against HART on account thereof.
- b. This is a multi-term Agreement, thus the contractual obligation of both parties in each fiscal period succeeding the first will be subject to the appropriation and availability of funds. Currently, funds are available for only the initial year of the Agreement. HART will notify the Contractor, on a timely basis, whether or not funds are available for each succeeding fiscal period.

- c. Compensation for work and services shall be on a time and material basis but not to exceed the Total Price or the amount appropriated. Compensation shall be calculated using the applicable rates in Attachment A of the Special Provisions, attached hereto and incorporated herein, multiplied by the number of authorized hours worked on the Project. The CONTRACTOR shall obtain advance written approval by category from HART for each and every employee that the CONTRACTOR proposes to work on the Project and for which reimbursement will be requested.
- d. Reimbursable expenses referred to in paragraph 5 of the Agreement, and identified in Attachment A to the Special Provisions, attached hereto and incorporated herein, shall be billed at cost without markup by the CONTRACTOR and shall include actual authorized expenses incurred by the CONTRACTOR for Work performed.
- e. Progress Report. The CONTRACTOR shall submit a progress report along with the monthly invoice. The progress report will identify the Work activities for which compensation is being requested.
- f. Payment Schedule. Each month the CONTRACTOR shall submit to HART an invoice for payment for Work completed to the end of the previous month in a form and in reasonable detail as determined by HART. Such invoices shall be for Work performed subsequent to that Work covered by all previously submitted invoices and shall be completed pursuant to the rates and limitations set forth herein above. Invoices shall be supported by adequate documentation as determined by HART and shall detail the work, hours, and employee name for which payment is being requested and shall itemize, with receipts and invoices attached, the reimbursable expenses for which reimbursement is being requested. Within thirty (30) days of receipt of an invoice and upon approval of the Work satisfactorily completed and amount billed, HART will pay the invoice as approved. At no time shall the total cumulative amount paid for the Work exceed the Total Price. **The CONTRACTOR shall notify HART in writing no later than ten (10) days after incurring seventy five percent (75%) of the Total Price or whenever the CONTRACTOR believes the Work cannot be completed for the Total Price."**

#### **D. PROMPT PAYMENT TO SUBCONTRACTORS**

Section 8.6 of the General Terms and Conditions, entitled "PROMPT PAYMENT BY CONTRACTORS TO SUBCONTRACTORS," is hereby deleted in its entirety and replaced with the following:

**“8.6. PROMPT PAYMENT BY CONTRACTORS TO SUBCONTRACTORS**

- a. Any money, other than retainage, paid to the CONTRACTOR shall be dispersed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes.
- b. Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract. *See HAR § 3-125-33.*
- c. A payment request made by the CONTRACTOR to the Officer-in-Charge that includes a request for sums that were withheld or retained from a subcontractor and are due to the subcontractor may not be approved, unless the payment request includes:
  1. Substantiation of the amounts requested; and
  2. Certification by the CONTRACTOR, to the best of the CONTRACTOR's knowledge and belief; that:
    - i) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the Agreement;
    - ii) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the Agreement and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and
    - iii) The payment request does not include any amounts that the CONTRACTOR intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract.
- d. Prompt Payment of Retainage to Subcontractors upon Satisfactory Completion of Subcontractor Work. Upon satisfactory completion of accepted work by a subcontractor, the CONTRACTOR shall request sums that were withheld or retained from a subcontractor and are due to the subcontractor pursuant to subsection (c). The CONTRACTOR shall pay all retainage owed to the subcontractor within ten (10) days after payment to the CONTRACTOR.”



## VI. FEDERAL CLAUSES

### FEDERAL FUNDING, INCORPORATION OF FTA TERMS, AND CHANGES TO FEDERAL REQUIREMENTS

This Agreement includes, in part, certain standard terms and conditions required by the Federal Transit Administration (“FTA”), whether or not expressly set forth in the Agreement provisions. All provisions required by the FTA, as set forth in FTA Circular 4220.1F, dated November 1, 2008 (including any changes), are herein incorporated by reference. Anything to the contrary notwithstanding, all FTA mandated terms and conditions will be deemed to control in the event of a conflict with other provisions contained in the Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any HART request which would cause HART to be in violation of FTA terms and conditions. This Agreement will be subject to any financial assistance agreement between HART and the FTA and all laws, regulations, guidelines, and provisions of the financial assistance agreement will apply to the Agreement and will be incorporated by reference as if fully set forth therein.

The CONTRACTOR shall at all times comply with all applicable Federal Government laws and regulations, including without limitation FTA regulations, policies, procedures and directives, including those listed directly or by reference in Applicable Grant Agreements between HART and FTA, as they may be amended or promulgated from time to time during the term of the Agreement (collectively, “Federal Requirements”). These Federal Requirements may change, and the changed Federal Requirements will apply to this Agreement as required unless the Federal Government determines otherwise. The CONTRACTOR’s failure to comply with the Federal Requirements shall constitute a material breach of the Agreement.

The Federal Requirements are contained in Exhibit 2, attached hereto and incorporated by reference.

## VII. ASSIGNMENT

This is non-transferable and non-assignable in whole or in part, except by an instrument, in writing, signed by each of the Parties.

## VIII. HEADINGS; GENDER; NUMBER

The titles of headings of Sections, Subsections and Paragraphs are intended for convenience of reference and shall not be considered as having any bearing on their interpretation.

All words used in the singular shall extend to and include the plural. All words used in the plural shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

IX. REFERENCES TO THE CITY AND COUNTY OF HONOLULU

The acronym "HART" shall be substituted for "City and County of Honolulu", "CITY", "Rapid Transit Division", and "RTD" wherever those terms appear in the Section 106 Programmatic Agreement Project Manager (Kako'o) Professional Services Contract RFP and Contract Documents inclusive of all Addenda, unless the context clearly indicates otherwise.

X. COMPLIANCE WITH OMB CIRCULAR A-87 - OFFICE OF MANAGEMENT AND BUDGET

The CONSULTANT shall at all times comply with the Office of Management and Budget (OMB) Circular A-87, Revised 05/10/2004, which establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State, Local, and Indian Tribal Governments. This Circular and its Attachments (A to E) establish the principles and standards to provide a uniform approach for determining allowable costs.

# **SPECIAL PROVISIONS**

## **EXHIBIT 1**

### **HONOLULU RAIL TRANSIT PROJECT**

#### **SECTION 106 PROGRAMMATIC AGREEMENT PROJECT MANAGER (KAKO'O) PROFESSIONAL SERVICES CONTRACT**

## **SCOPE OF SERVICES**

**EXHIBIT 1**

**TABLE OF CONTENTS**

<b>1.0</b>	<b>SECTION 106 PROGRAMMATIC AGREEMENT PROJECT MANAGER (KAKO'O).....</b>	<b>1</b>
1.1	CONTRACTED SERVICES .....	1
1.2	DURATION.....	1
1.3	EXPERIENCE .....	1
1.4	RESPONSIBILITIES.....	1

**EXHIBIT 1**  
**SCOPE OF SERVICES**

**1.0 SECTION 106 PROGRAMMATIC AGREEMENT PROJECT MANAGER (KAKO'O)**

**1.1 CONTRACTED SERVICES**

Must meet the *Secretary of the Interior's Professional Qualification Standards* set forth at 36 C.F.R. pt. 61 regarding qualifications for preservation professionals in the areas of history, archaeology, architectural history, architecture or historic architecture.

**1.2 DURATION**

The position will provide professional services for approximately ten (10) years during the design and construction of the Honolulu Rail Transit Project ("Project").

**1.3 EXPERIENCE**

A minimum of ten (10) years of experience with Section 106 consultation and working with disparate groups, experience preparing the documentation required in the Programmatic Agreement ("PA"), and supervisory/reviewer experience.

This position is critical to the success of the Project.

**1.4 RESPONSIBILITIES**

- A) Coordinate and manage design plan reviews and other deliverables specified under the terms of the Project's Section 106 PA.
- B) Monitor, assess and report to Section 106 consulting parties on PA compliance.
- C) Establish and maintain lines of project-related communication and consultation with the consulting parties and the Project's design and construction engineers.
- D) Provide oversight and monitoring of internet sites created for the Project.
- E) Monitor and report on work performed on historic properties with respect to measures to resolve adverse effects caused by the Project.
- F) Coordinate regularly with the Federal Transit Administration ("FTA") and State Historic Preservation Division.
- G) Submit written reports concerning Project progress.
- H) Provide administrative support and technical assistance required by the consulting parties to meet the terms of the PA.
- I) Research issues and prepare a recommendation for the disposition of the request and action by the FTA.
- J) Develop a best practices manual related to historic properties and a Section 106 "lessons learned" case study on the Project that may be helpful to future Section 106 processes on this and other projects.
- K) Provide guidance regarding the implementation of the terms of this PA to all contractors, particularly those involved in construction-related activities.

# **SPECIAL PROVISIONS**

## **EXHIBIT 2**

**HONOLULU RAIL TRANSIT PROJECT**

**SECTION 106 PROGRAMMATIC AGREEMENT PROJECT MANAGER (KAKO'O)  
PROFESSIONAL SERVICES CONTRACT**

# **FEDERAL REQUIREMENTS**

## Table Of Contents

<b>1.0</b>	<b>General .....</b>	<b>1</b>
1.1	NO GOVERNMENT OBLIGATION TO THIRD PARTIES .....	1
1.2	PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS .....	1
1.3	ACCESS TO RECORDS AND REPORTS.....	2
1.4	FEDERAL CHANGES.....	2
1.5	CIVIL RIGHTS REQUIREMENTS .....	2
1.6	DISADVANTAGED BUSINESS ENTERPRISES (DBE) .....	3
1.7	GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT).....	4
1.8	LOBBYING .....	5
1.9	CLEAN AIR REQUIREMENTS.....	5
1.10	CLEAN WATER REQUIREMENTS .....	5
1.11	FLY AMERICA REQUIREMENTS .....	5
1.12	ENERGY CONSERVATION REQUIREMENTS.....	6
1.13	RECYCLED PRODUCTS.....	6
1.14	ADA ACCESS.....	6
1.15	SEISMIC SAFETY .....	6
1.16	TEXT MESSAGING WHILE DRIVING .....	6
1.17	SENSITIVE SECURITY INFORMATION .....	7
1.18	INCORPORATION OF FTA TERMS .....	7
<b>Attachment 1.6 a) - DBE PARTICIPATION REPORT.....</b>		<b>9</b>
<b>Attachment 1.6 b) - FINAL REPORT DBE PARTICIPATION .....</b>		<b>10</b>
	<b>INSTRUCTIONS FOR COMPLETION OF THE FINAL REPORT OF DBE PARTICIPATION.....</b>	<b>11</b>

## **FEDERAL REQUIREMENTS**

### **1.0 GENERAL**

The CONTRACTOR understands that Federal laws, regulations, policies, and related administrative practices applicable to this Agreement on the date signed may be modified from time to time. The CONTRACTOR agrees that the most recent of such Federal requirements will govern the administration of the Agreement at any particular point in time, except if HART issues a written determination otherwise. To achieve compliance with changing Federal requirements, the CONTRACTOR agrees to include notice in each subcontract that Federal requirements may change and that the changed requirements will apply to the subcontract as required.

#### **1.1 No Government Obligation to Third Parties**

(a) HART and the CONTRACTOR acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to HART, the CONTRACTOR, or any other party (whether or not a party to that Agreement) pertaining to any matter resulting from the underlying Agreement.

(b) The CONTRACTOR agrees to include the above clause in each subcontract. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### **1.2 Program Fraud and False or Fraudulent Statements and Related Acts**

(a) The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the Federal Transit Administration (FTA) assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONTRACTOR to the extent the Federal Government deems appropriate.

(b) The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under an Agreement connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. Chapter 53, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the CONTRACTOR, to the extent the Federal Government deems appropriate.

(c) The CONTRACTOR shall include the above two clauses in each subcontract. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.



### **1.3 Access to Records and Reports**

(a) The CONTRACTOR shall provide HART, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the CONTRACTOR which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. The CONTRACTOR shall, pursuant to 49 C.F.R. § 633.17, provide the FTA Administrator or his authorized representatives, including any Project Management Oversight Contractor, access to the CONTRACTOR's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309 or 5311.

(b) The CONTRACTOR shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(c) The CONTRACTOR shall maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case the CONTRACTOR shall maintain the same until HART, the FTA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

### **1.4 Federal Changes**

The CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between HART and the FTA, as they may be amended or promulgated from time to time during the term of this Agreement. The CONTRACTOR's failure to so comply shall constitute a material breach of this Agreement.

### **1.5 Civil Rights Requirements**

The CONTRACTOR shall comply with the following requirements and include the following requirements in each subcontract, modified only if necessary to identify the affected parties:

(a) Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the CONTRACTOR shall comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(b) Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying Agreement:

(1) Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit law at 49 U.S.C. § 5332, the CONTRACTOR shall comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e), and with any applicable Federal statutes, executive orders, regulations, and

Federal policies that may in the future affect construction activities undertaken in the course of the Project. The CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CONTRACTOR shall comply with any implementing requirements FTA may issue.

(2) Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the CONTRACTOR shall refrain from discrimination against present and prospective employees for reason of age. In addition, the CONTRACTOR shall comply with any implementing requirements FTA may issue.

(3) Disabilities. In accordance with section 102 of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12112, the CONTRACTOR shall comply with the requirements of the U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the CONTRACTOR shall comply with any implementing requirements FTA may issue.

(4) Access for Individuals with Disabilities. The CONTRACTOR shall comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities.

## **1.6 Disadvantaged Business Enterprises (DBE)**

(a) DBE Assurances. The CONTRACTOR and its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The CONTRACTOR shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. DOT-assisted Agreements. Failure by the CONTRACTOR to carry out these requirements is a material breach of this Agreement, which may result in termination of this Agreement or such other remedy, as HART deems appropriate.

The above paragraph shall be included in each subcontract the CONTRACTOR signs with a subcontractor.

(b) Prompt Payment. The CONTRACTOR shall pay all subcontractors (DBEs and non-DBEs) for satisfactory performance of their subcontracts no later than ten (10) days from receipt of payment by HART. Full and prompt payment by the CONTRACTOR to all subcontractors shall include retainage, if applicable.

(c) DBE Goal. HART has established a race neutral overall DBE goal of 3.83% for fiscal year 2012. Although HART has not established a DBE Agreement goal for this Project, DBE firms and small businesses shall have an equal opportunity to participate in the Agreement. The CONTRACTOR shall adhere to the following requirements:

(1) Take affirmative steps to use as many of the race-neutral means of achieving DBE participation identified at 49 C.F.R. § 26.51(b) as practicable to afford opportunities to DBEs to participate in the Agreement. A race-neutral measure is one that is, or can be, used to assist all small businesses.

(2) A DBE firm must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work; and

(3) A DBE firm must be certified by the Hawai'i State Department of Transportation before its participation is reportable under paragraph (d) below;

(d) Reports to HART. The CONTRACTOR shall report its DBE participation obtained through race-neutral means throughout the period of performance. The CONTRACTOR shall submit the "DBE PARTICIPATION REPORT" reflecting payments made by the CONTRACTOR to DBE subcontractors. Payments to the CONTRACTOR will not be processed if the DBE PARTICIPATION REPORT is not properly completed and attached. The DBE PARTICIPATION REPORT shall be prepared in the format set forth in ATTACHMENT 1.6 a) of this Exhibit.

(e) Records. On request, the CONTRACTOR shall make available for inspection, and assure that its subcontractors make available for inspection:

(1) Records of prompt payments made in accordance with Section 1.6(b), above;

(2) The names and addresses of DBE subcontractors, vendors, and suppliers under this Agreement;

(3) The dollar amount and nature of work of each DBE subcontractor;

(4) The social/economic disadvantaged category of the DBE firms, i.e. Black American, Hispanic American, Native American, Subcontinent Asian American, Asian Pacific American, Non-Minority Women, or Other; and

(5) Other related materials and information.

(f) The CONTRACTOR shall promptly notify HART, whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work. The CONTRACTOR shall also promptly notify HART of a DBE subcontractor's inability or unwillingness to perform and provide reasonable documentation.

#### **1.7 Government-Wide Debarment and Suspension (Non-procurement)**

(a) This Agreement is a covered transaction for purposes of 2 C.F.R. § 180.220(b) and 2 C.F.R. § 1200.220. As such, the CONTRACTOR is required to verify that none of the CONTRACTOR, its principals, as defined at 2 C.F.R. § 180.995, or affiliates, as defined at 2 C.F.R. § 180.905, are excluded or disqualified as defined at 2 C.F.R. § 180.940 and 2 C.F.R. § 180.935.

(b) The CONTRACTOR is required to comply with 2 C.F.R. § 180 Subpart C, as supplemented by 2 C.F.R. § 1200 Subpart C, and must include the requirement to comply with 2 C.F.R. § 180, Subpart C, as supplemented by 2 C.F.R. § 1200 Subpart C, in any lower tier covered transaction equal to or exceeding \$25,000 it enters into. By signing the Agreement, the CONTRACTOR certifies as follows:

(1) The certification in this clause is a material representation of fact relied upon by HART and the City and County of Honolulu ("The City"). If it is later determined that the CONTRACTOR knowingly rendered an erroneous certification, in addition to remedies available to HART and the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The CONTRACTOR agrees to comply with the requirements of 2 C.F.R. § 180, Subpart C, as supplemented by 2 C.F.R. § 1200 Subpart C, throughout the Agreement period. The CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered transactions equal to or exceeding \$25,000.

## **1.8 Lobbying**

The "CERTIFICATION REGARDING LOBBYING," as executed by the CONTRACTOR in Exhibit 8 of the Request for Qualifications, is incorporated herein by this reference. The CONTRACTOR and its subcontractors at every tier shall comply with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352, which requires that no Federal appropriated funds shall be used to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal Agreement, grant, or award covered by 31 U.S.C. § 1352. Such disclosures are forwarded from tier to tier up to HART.

## **1.9 Clean Air Requirements**

(a) The CONTRACTOR shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The CONTRACTOR shall report each violation to HART and understands and agrees that HART will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

(b) The CONTRACTOR shall include the above clause in each subcontract exceeding \$100,000.

## **1.10 Clean Water Requirements**

(a) The CONTRACTOR shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. The CONTRACTOR shall report each violation to HART and understands and agrees that HART will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

(b) The CONTRACTOR shall include the above clause in each subcontract exceeding \$100,000.

## **1.11 Fly America Requirements**

(a) The CONTRACTOR shall comply with 49 U.S.C. § 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 C.F.R. Parts 301-10, which provide that HART and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The CONTRACTOR shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements.

(b) The CONTRACTOR shall include the requirements of this section in all subcontracts that may involve international air transportation.

#### **1.12 Energy Conservation Requirements**

(a) The CONTRACTOR shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

(b) The CONTRACTOR shall include the above clause in each subcontract at every tier. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

#### **1.13 Recycled Products**

The CONTRACTOR agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act as amended (42 U.S.C. § 6962), including, but not limited to, the regulatory provisions of 40 C.F.R. Part 247, and Executive Order No. 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

#### **1.14 ADA Access**

The CONTRACTOR shall comply with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities, and any subsequent amendments to these laws. In addition, the CONTRACTOR agrees to comply with all applicable implementing Federal regulations and directives and any subsequent amendments thereto.

#### **1.15 Seismic Safety**

The CONTRACTOR shall ensure that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in the U.S. Department of Transportation's Seismic Safety Regulations (49 C.F.R. Part 41) and shall certify to compliance to the extent required by the regulation. The CONTRACTOR also agrees to ensure that all work performed under this Agreement including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

#### **1.16 Text Messaging While Driving**

In accordance with Executive Order No. 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, 23 U.S.C.A. § 402 note, and U.S. DOT Order 3902.10, Text Messaging While Driving, December 30, 2009, the CONTRACTOR is encouraged to comply with the terms of the following:

(a) Definitions.

(1) "Driving" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

(2) "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant

messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

(b) Safety. The CONTRACTOR is encouraged to:

(1) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving:

(A) CONTRACTOR-owned or CONTRACTOR-rented vehicles or Government-owned, leased or rented vehicles;

(B) Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or

(C) Any vehicle, on or off duty, and using an employer supplied electronic device.

(2) Conduct workplace safety initiatives in a manner commensurate with the CONTRACTOR's size, such as:

(A) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(B) Education, awareness, and other outreach to employees about the safety risks associated with text messaging while driving.

(3) Include this Special Provision in its subagreements with its subrecipients and third party contracts and also encourage its subrecipients, lessees, and third party contractors to comply with the terms of this Special Provision and include this clause in each subagreement, lease, and subcontract at each tier financed with Federal assistance provided by the Federal Government.

### **1.17 Sensitive Security Information**

The CONTRACTOR, as a third party contractor must protect, and take measures to ensure that its subcontractors at each tier protect, "sensitive security information" made available during the administration of a third party contract or subcontract to ensure compliance with 49 U.S.C. Section 40119(b) and implementing DOT regulations, "Protection of Sensitive Security Information," 49 CFR Part 15, and with 49 U.S.C. Section 114(r) and implementing Department of Homeland Security regulations, "Protection of Sensitive Security Information", 49 CFR Part 1520.

### **1.18 Incorporation of FTA Terms**

(a) The Special Provisions to the Agreement are to include, in part, certain Standard Terms and Conditions required by the U.S. DOT, whether or not expressly set forth in the preceding provisions. All contractual provisions required by the U.S. DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any requests which would cause HART to be in violation of the FTA terms and conditions.

(b) The CONTRACTOR shall include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

# ATTACHMENT 1.6 a) – DBE PARTICIPATION REPORT

DBE PARTICIPATION REPORT					
This report shall be submitted with each invoice as a condition of payment under this Contract.					
Project Name:					
Contract No:		Contractor Name:			
Federal ID No.: (OWP WE #, FTA Grant #, FHWA Project #)		Contract Amount (including amendments):		\$	
Period Covered By This Report:		Current (Invoice # _____)		Total to Date	
Total Invoice Amount		(A) \$	(B) \$		
Payment Requested:		DBE? (Yes/No) DBE Code (if "Yes")	Prior Amount*	Current Amount*	Total Amount to Date*
Prime Contractor					
Subcontractors (attach additional sheets as needed):					
Name: Type of Work:					
Name: Type of Work:					
Name: Type of Work:					
Name: Type of Work:					
Name: Type of Work:					
TOTALS					(C) \$
DBE Participation to Date (C/B)				%	

***\*Insert dollar amounts for DBEs only***



## ATTACHMENT 1.6 b) - FINAL REPORT OF DBE PARTICIPATION

This report must be submitted by the Contractor with the final invoice or request for payment under this contract.

Project Title: \_\_\_\_\_

Contractor Name: \_\_\_\_\_

Project No.: \_\_\_\_\_ Contract No.: \_\_\_\_\_

Period Covered by this Report: \_\_\_\_\_

Contract Amount (including amendments): \$ \_\_\_\_\_

Final Payment Amount: \$ \_\_\_\_\_ Invoice No.: \_\_\_\_\_

Total Payment to DBE: \$ \_\_\_\_\_

All Subcontractors (DBE and non-DBE) & DBE Suppliers or Manufacturers	Type of Service or Materials Provided	Subcontract Amount
Name Address Telephone No.		
Name Address Telephone No.		
Name Address Telephone No.		
Name Address Telephone No.		

Add additional sheets as necessary.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name & Title

**ATTACHMENT 1.6 b) - INSTRUCTIONS FOR COMPLETING THE  
FINAL REPORT OF DBE PARTICIPATION**

All subcontractors, suppliers and manufacturers should be listed on the FINAL REPORT OF DBE PARTICIPATION in the same order as listed in the proposal.

Project Title:	Self-Explanatory
Project No.:	Self-Explanatory
Period Covered by this Report:	Same period as invoice period
Contractor Name:	Self-Explanatory
Contractor No:	Self-Explanatory
Contract Amount (including amendments):	Less Mobilization, Force Account Items and Allowance Items Amendments should be listed separately with an explanation of how it was allocated to DBEs and non-DBEs
Invoice No.:	Self-Explanatory
Final Payment Amount:	Self-Explanatory
Total Payment to DBE	Total \$ amount paid to DBE

## CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, cost or pricing data as defined in section 3-122-122, HAR, and submitted pursuant to section 3-122-125, HAR; either actually or by specific identification in writing to the officer-in-charge in support of \* Project Manager (Kako'o)  
Professional Services Contract (SC-HRT-1200066, RFP-DTS-406803)  
are accurate, complete, and current as of \*\* 20 March 2012  
(Month, day, year)

This certification includes the cost or pricing data supporting any advance agreement(s) between the offeror and the City which are part of the proposal.

Firm: Pacific Legacy  
Signature: [Signature]  
Paul L. Cleghorn, Vice President  
(Print name & title of person signing)

Date of execution\*\*\*: 20 March 2012

- \* Describe the project and reference (i.e. project name, +PCD No., field change, change order number, etc.).
- \*\* The date should be a mutually determined date prior to but as close to the date when price negotiations were concluded and the price was agreed to as possible.
- \*\*\* Date of execution should be as soon after the date when price negotiations were concluded and the contract price was agreed to as practical.

(This document shall be signed, sealed, and notarized.)

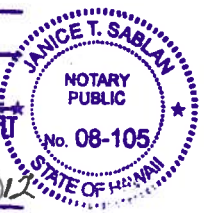
SUBSCRIBED AND SWORN HERETO

BEFORE ME ON THIS 20

DAY OF March 2012

NOTARY PUBLIC, FIRST JUDICIAL CIRCUIT  
STATE OF HAWAII

MY COMMISSION EXPIRES April 27, 2012



Doc. Date: 3-20-2012 # Pages 23  
Notary Name: Janice T. Sablan First Circuit  
Doc. Description: General terms  
\* Condition  
Notary Signature: [Signature] Date: 3-20-2012  
NOTARY CERTIFICATION



**ATTACHMENT A**

**TO THE SPECIAL PROVISIONS TO THE  
AGREEMENT FOR PROFESSIONAL SERVICES**

**AGREED RATES OF PAY**

Dated: March 8, 2012

<u>Agreed Positions</u>	<u>Hourly Rate</u>
Kako'o	
Section 106 Specialist	
Administrative Managers	<div style="border: 1px solid black; padding: 5px; text-align: center;">redacted pursuant to HRS 92F</div>
Prehistoric Archaeologist	
Historic Archaeologist	
Architectural Historian	

The hourly rates above shall be inclusive of all costs including but not limited to: labor, materials, profit, overhead, taxes and insurance.

<b><u>APPROPRIATED AMOUNT</u></b>	<b><u>AMOUNT</u></b>
LABOR ALLOWANCE	\$ 95,000.00
REIMBURSEABLE EXPENSES	\$ <u>5,000.00</u>
PRICE INCLUDING TAX	\$ 100,000.00
 <b><u>TOTAL PRICE</u></b>	 <b><u>AMOUNT</u></b>
TOTAL AGGREGATE PRICE	\$1,000,000.00

## ATTACHMENT B-1

### **TASK ORDER PROCEDURES**

- a) Any services to be furnished under this contract shall be ordered by issuance of Task Orders. The following individuals are authorized to issue Task Orders hereunder:

**Names and contact information:**

**Dawn Hegger                      808-768-6240**

**1099 Alakea Street Suite 2300  
Honolulu, Hawaii 96813**

**Faith Miyamoto                808-768-8350**

**1099 Alakea Street Suite 2300  
Honolulu, Hawaii 96813**

- b) Task Orders issued under this contract shall be issued on the Task Order Form attached herein as Attachment B-2, incorporated by this reference. Task Orders will include the following information:
- a. Date issued;
  - b. Contract number and Task Order number;
  - c. Scope of Services reference section and work scope;
  - d. Labor category, labor rate, and estimated level of effort;
  - e. Period of performance or delivery date;
  - f. Land Parcel (if applicable);
  - g. Deliverables, submittals, reports;
  - h. Other Direct Costs included (ODC's); and
  - i. Other information as required.
- c) All Task Orders are subject to the terms and conditions of this contract. In the event of conflict between a Task Order and this Agreement, the Agreement shall control.
- d) If mailed, a Task Order is considered "issued" when HART deposits the order in the mail. Orders may be issued by facsimile or electronically.

### ORDER LIMITATIONS

- a) Minimum order: \$2,500.00

HART is not required to order any requirements from the CONTRACTOR in excess of the minimum-order limitation.

- b) Time and Materials Contract Ceiling Amount: The total of all task orders issued under this contract shall not exceed the contract Total Estimated Aggregate Ceiling Amount of ONE MILLION and NO/100 Dollars (\$1,000,000.00).

- b) Time and Materials Contract Ceiling Amount: The total of all task orders issued under this contract shall not exceed the contract Total Estimated Aggregate Ceiling Amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00).

### ORDERING PROCEDURES

Authorized HART individuals identified above, or a duly appointed representative designated in writing, may execute a Task Order. Each Task Order issued shall become a part of this Agreement. Task Orders will describe the services to be performed and/or submittals and reports to be delivered, as set forth in Exhibit 1 to the Special Provisions, Scope of Services, attached herein and incorporated by this reference, or as otherwise instructed by HART.

The Contractor shall review the Task Order scope of services and estimated cost as issued. If HART does not receive the Contractor proposal within five (5) days from Task Order issuance, the Task Order will be deemed accepted.

If CONTRACTOR is not in agreement with the estimated cost, labor mix, level of effort, or performance schedule, the CONTRACTOR shall, within five (5) days from Task Order issuance, prepare a proposal that provides the following information:

- a) A detailed cost proposal estimate setting forth CONTRACTOR's estimated labor mix, level of effort, labor rates per category, extended cost and total estimated cost;
- b) A proposed schedule for completion of the Task Order;
- c) A description of the technical and management approach CONTRACTOR will employ to accomplish the work; and
- d) Any supporting documentation.

Within five (5) days of receipt of the CONTRACTOR's proposal, HART will evaluate the proposal and will determine if modification of the Task Order is required.

If the parties are unable to agree on cost, the pricing method set forth in Section 5.2 of the General Terms and Conditions, entitled "Price Adjustment", shall govern the pricing of the Task Order.

**In no case shall the CONTRACTOR exceed the amounts authorized under the Task Order without obtaining a written amendment to the Task Order.**

**ATTACHMENT B-2**  
**TASK ORDER FORM**

**Date Issued** \_\_\_\_\_  
**Contract No.** \_\_\_\_\_  
**Task Order No.** \_\_\_\_\_

**Issued To: (Contractor)**

**Issued By: (HART)**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Description of Task Order Services/Deliverables:** (Reference Scope of Services section and attach a work scope to this form.)

**Location of Services:**

**Period of Performance:** \_\_\_\_\_

In accordance with the Special Provisions of Contract No. \_\_\_\_\_, this Task Order is issued and hereby authorizes Contractor to perform the following services under the terms and conditions set forth herein.

<b>Labor Category</b>	<b>Fully-Burdened Rate</b>	<b>Hours</b>	<b>Total</b>
	\$ -		\$ -
	\$ -		\$ -
	\$ -		\$ -
	\$ -		\$ -
	\$ -		\$ -
	\$ -		\$ -
	\$ -		\$ -
<b>Total Labor</b>		-	\$ -
<b>Other Direct Cost</b>			
			\$ -
			\$ -
			\$ -
			\$ -
			\$ -
<b>Total Other Direct Costs</b>			\$ -
<b>TOTAL Labor + ODCs</b>			\$ -

Upon execution of this Task Order, HART and Contractor agree to be bound by and to comply with all of the terms and conditions contained in the above referenced Agreement, as well as the Special Provisions and General Conditions contained herein.

**Authorized By:**

**Accepted By:**

**Honolulu Authority for  
Rapid Transportation (HART)**

***[Name of Contractor]***

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



## CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, cost or pricing data as defined in section 3-122-122, HAR, and submitted pursuant to section 3-122-125, HAR; either actually or by specific identification in writing to the officer-in-charge in support of \* Project Manager (Kako'o)  
Professional Services Contract (SC-HRT-1200066, RFP-DTS-406803)  
are accurate, complete, and current as of \*\* 20 March 2012  
(Month, day, year)

This certification includes the cost or pricing data supporting any advance agreement(s) between the offeror and the City which are part of the proposal.

Firm: Pacific Legacy  
Signature: [Signature]  
Paul L. Cleghorn, Vice President  
(Print name & title of person signing)

Date of execution\*\*\*: 20 March 2012

- \* Describe the project and reference (i.e. project name, +PCD No., field change, change order number, etc.).
- \*\* The date should be a mutually determined date prior to but as close to the date when price negotiations were concluded and the price was agreed to as possible.
- \*\*\* Date of execution should be as soon after the date when price negotiations were concluded and the contract price was agreed to as practical.

(This document shall be signed, sealed, and notarized.)

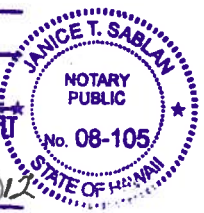
SUBSCRIBED AND SWORN HERETO

BEFORE ME ON THIS 20

DAY OF March 2012

NOTARY PUBLIC, FIRST JUDICIAL CIRCUIT  
STATE OF HAWAII

MY COMMISSION EXPIRES April 27, 2012



Doc. Date: 3-20-2012 # Pages 23  
Notary Name: Janice T. Sablan First Circuit  
Doc. Description: General terms  
\* Condition  
Notary Signature: [Signature] Date: 3-20-2012  
NOTARY CERTIFICATION



**ATTACHMENT A**

**TO THE SPECIAL PROVISIONS TO THE  
AGREEMENT FOR PROFESSIONAL SERVICES**

**AGREED RATES OF PAY**

Dated: March 8, 2012

<u>Agreed Positions</u>	<u>Hourly Rate</u>
Kako'o	
Section 106 Specialist	
Administrative Managers	redacted pursuant to HRS 92F
Prehistoric Archaeologist	
Historic Archaeologist	
Architectural Historian	

The hourly rates above shall be inclusive of all costs including but not limited to: labor, materials, profit, overhead, taxes and insurance.

<b><u>APPROPRIATED AMOUNT</u></b>	<b><u>AMOUNT</u></b>
LABOR ALLOWANCE	\$ 95,000.00
REIMBURSEABLE EXPENSES	\$ <u>5,000.00</u>
PRICE INCLUDING TAX	\$ 100,000.00
 <b><u>TOTAL PRICE</u></b>	 <b><u>AMOUNT</u></b>
TOTAL AGGREGATE PRICE	\$1,000,000.00

## ATTACHMENT B-1

### **TASK ORDER PROCEDURES**

- a) Any services to be furnished under this contract shall be ordered by issuance of Task Orders. The following individuals are authorized to issue Task Orders hereunder:

**Names and contact information:**

**Dawn Hegger                      808-768-6240**

**1099 Alakea Street Suite 2300  
Honolulu, Hawaii 96813**

**Faith Miyamoto                808-768-8350**

**1099 Alakea Street Suite 2300  
Honolulu, Hawaii 96813**

- b) Task Orders issued under this contract shall be issued on the Task Order Form attached herein as Attachment B-2, incorporated by this reference. Task Orders will include the following information:
- a. Date issued;
  - b. Contract number and Task Order number;
  - c. Scope of Services reference section and work scope;
  - d. Labor category, labor rate, and estimated level of effort;
  - e. Period of performance or delivery date;
  - f. Land Parcel (if applicable);
  - g. Deliverables, submittals, reports;
  - h. Other Direct Costs included (ODC's); and
  - i. Other information as required.
- c) All Task Orders are subject to the terms and conditions of this contract. In the event of conflict between a Task Order and this Agreement, the Agreement shall control.
- d) If mailed, a Task Order is considered "issued" when HART deposits the order in the mail. Orders may be issued by facsimile or electronically.

### ORDER LIMITATIONS

- a) Minimum order: \$2,500.00

HART is not required to order any requirements from the CONTRACTOR in excess of the minimum-order limitation.

- b) Time and Materials Contract Ceiling Amount: The total of all task orders issued under this contract shall not exceed the contract Total Estimated Aggregate Ceiling Amount of ONE MILLION and NO/100 Dollars (\$1,000,000.00).

- b) Time and Materials Contract Ceiling Amount: The total of all task orders issued under this contract shall not exceed the contract Total Estimated Aggregate Ceiling Amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00).

### ORDERING PROCEDURES

Authorized HART individuals identified above, or a duly appointed representative designated in writing, may execute a Task Order. Each Task Order issued shall become a part of this Agreement. Task Orders will describe the services to be performed and/or submittals and reports to be delivered, as set forth in Exhibit 1 to the Special Provisions, Scope of Services, attached herein and incorporated by this reference, or as otherwise instructed by HART.

The Contractor shall review the Task Order scope of services and estimated cost as issued. If HART does not receive the Contractor proposal within five (5) days from Task Order issuance, the Task Order will be deemed accepted.

If CONTRACTOR is not in agreement with the estimated cost, labor mix, level of effort, or performance schedule, the CONTRACTOR shall, within five (5) days from Task Order issuance, prepare a proposal that provides the following information:

- a) A detailed cost proposal estimate setting forth CONTRACTOR's estimated labor mix, level of effort, labor rates per category, extended cost and total estimated cost;
- b) A proposed schedule for completion of the Task Order;
- c) A description of the technical and management approach CONTRACTOR will employ to accomplish the work; and
- d) Any supporting documentation.

Within five (5) days of receipt of the CONTRACTOR's proposal, HART will evaluate the proposal and will determine if modification of the Task Order is required.

If the parties are unable to agree on cost, the pricing method set forth in Section 5.2 of the General Terms and Conditions, entitled "Price Adjustment", shall govern the pricing of the Task Order.

**In no case shall the CONTRACTOR exceed the amounts authorized under the Task Order without obtaining a written amendment to the Task Order.**

**ATTACHMENT B-2**  
**TASK ORDER FORM**

**Date Issued** \_\_\_\_\_  
**Contract No.** \_\_\_\_\_  
**Task Order No.** \_\_\_\_\_

**Issued To: (Contractor)**

**Issued By: (HART)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Description of Task Order Services/Deliverables:** (Reference Scope of Services section and attach a work scope to this form.)

**Location of Services:**

**Period of Performance:** \_\_\_\_\_

In accordance with the Special Provisions of Contract No. \_\_\_\_\_, this Task Order is issued and hereby authorizes Contractor to perform the following services under the terms and conditions set forth herein.

<b>Labor Category</b>	<b>Fully-Burdened Rate</b>	<b>Hours</b>	<b>Total</b>
	\$ -		\$ -
	\$ -		\$ -
	\$ -		\$ -
	\$ -		\$ -
	\$ -		\$ -
	\$ -		\$ -
	\$ -		\$ -
<b>Total Labor</b>		-	\$ -
<b>Other Direct Cost</b>			
			\$ -
			\$ -
			\$ -
			\$ -
			\$ -
<b>Total Other Direct Costs</b>			\$ -
<b>TOTAL Labor + ODCs</b>			\$ -

Upon execution of this Task Order, HART and Contractor agree to be bound by and to comply with all of the terms and conditions contained in the above referenced Agreement, as well as the Special Provisions and General Conditions contained herein.

**Authorized By:**

**Accepted By:**

**Honolulu Authority for  
Rapid Transportation (HART)**

***[Name of Contractor]***

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_